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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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**2003 Assembly Bill 88**

**Senate  
Amendment 1**

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### **CURRENT LAW**

Under *current law*, a person may not operate a motor vehicle if he or she has an alcohol concentration of 0.1 or more. If a person has two convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.08 or more. If a person has three or more convictions relating to operating a motor vehicle with a prohibited alcohol concentration, he or she may not operate a motor vehicle if he or she has an alcohol concentration of 0.02 or more.

Also under *current law*, a person may not operate an all-terrain vehicle (ATV), a snowmobile, or a boat if he or she has an alcohol concentration of 0.1 or more.

Under current law, certain assessments, fees, and costs are imposed in the case of operating while intoxicated (OWI) violations, including all first offense OWI violations.

### **THE ENGROSSED BILL**

References to “the bill” in this memo are to Engrossed 2003 Assembly Bill 88 (i.e., the bill as affected by Assembly Amendment 1, which was the only amendment adopted by the Assembly).

### **Change in Blood Alcohol Concentration From 0.1 to 0.08**

The bill changes the prohibited alcohol concentration from 0.1 to 0.08 for a person with one or no prior convictions relating to operating a *motor vehicle* with a prohibited alcohol concentration and from 0.1 to 0.08 for a person operating *an ATV, a snowmobile, or a boat*.

**Certain Assessments, Fees, and Costs Not Applicable to Certain First Offenses**

The bill provides that for a *first violation* of operating a motor vehicle, ATV, snowmobile, or boat the following assessments, fees, and costs do not apply *if* the person who committed the violation had a blood alcohol content (BAC) *between 0.08 and 0.099* at the time of the violation:

1. The crime laboratories and drug law enforcement assessment under s. 165.755 (1) (a), Stats. (currently \$5).
2. The jail assessment under s. 302.46 (1) (a), Stats. (currently 1% of the fine or forfeiture imposed or \$10, whichever is greater).
3. The penalty assessment under s. 757.05 (1) (a), Stats., whenever a court imposes a fine or forfeiture for a violation of a municipal or county ordinance (currently 24% of the fine or forfeiture imposed).
4. The fee in forfeiture actions under s. 814.63 (1) (c), Stats. (currently \$25).
5. The fee upon disposition of a forfeiture action in circuit court for violation of a municipal ordinance under s. 814.63 (2), Stats. (currently \$5).
6. The court support services fee under s. 814.634 (1) (a), Stats. (currently \$52).
7. The justice information system fee under s. 814.635 (1), Stats. (currently \$9).
8. The fee in municipal court actions under s. 814.65 (1), Stats. (currently not less than \$15 nor more than \$23, with \$5 sent to the State Treasurer for deposit in the general fund and the balance for the use of the municipality).

**Purging the Record of Certain First Offenses**

Under current law, the record of OWI and OWI-related violations must, under s. 343.23 (2) (b), Stats., be *maintained permanently*. Under the bill, the requirement that these records be maintained permanently would not apply to certain first OWI violations. The bill specifies that the Department of Transportation *must, after 10 years, purge* the record of a first violation of operating a motor vehicle, ATV, snowmobile, or boat with a prohibited alcohol concentration if *all of the following* apply:

1. The person who committed the violation had a BAC between 0.08 and 0.099 at the time of the violation.
2. The person does not have a Commercial Driver License (CDL).
3. During that 10-year period, the person has no other suspension, revocation, or conviction that would be counted under s. 343.307, Stats. (i.e., the provision that sets forth the OWI and OWI-related violations that will be counted in determining which offense the OWI violator is guilty of).

**SENATE AMENDMENT 1**

**Clarification of “Between 0.08 and 0.099” Language**

Senate Amendment 1 changes provisions in the bill referring to BAC “between 0.08 and 0.099” to read BAC *‘of 0.08 or more but less than 0.1.’* Without this change, these provisions would apply

only to BACs *between* 0.08 and 0.099 (i.e., would not include 0.08 and 0.099, but only the BACs between those numbers).

**Assessment and Driver Safety Plan Provisions Not Applicable to Certain First Offenses**

Under current law, a person who commits any OWI violation, including all first offense OWI violations, is required to submit to and comply with an assessment for examination of his or her use of alcohol or controlled substances and development of a driver safety plan for the person.

The **amendment** specifies that this assessment and driver safety plan requirement does not apply *if* the person who committed the violation had a BAC of 0.08 or more but less than 0.1 at the time of the violation.

**Driver Improvement Surcharge Not Applicable to Certain First Offenses**

Current law specifies that if a court imposes a fine or forfeiture for an OWI violation, it must impose a driver improvement surcharge in the amount of **\$355**. Moneys collected from the surcharge are used, as prescribed in the statutes, for various purposes, including, among other things, for services to drivers provided by the State Laboratory of Hygiene, the Department of Health and Family Services, the Department of Public Instruction, and county boards under s. 51.42, Stats.

The **amendment** specifies that the driver improvement surcharge is not applicable to a first-time OWI violator if the person who committed the violation had a BAC of 0.08 or more but less than 0.1 at the time of the violation.

**Clarification of Provision Relating to Purging of Records of Certain Violators and Commercial Motor Vehicle Operators**

With reference to the provision in the bill on purging the record of certain first OWI offenses, the bill appears to require the Department of Transportation (DOT) to purge the record of such an offense committed by a person who does *not* hold a CDL but who is operating a commercial motor vehicle (CMV) at the time of the offense. This would appear to violate the federal CDL record retention rules that mandate lifetime (55 years) retention of the records of such offenses for all persons operating a CMV at the time of the offense, whether or not they hold a CDL. The **amendment** clarifies this provision, to accord with the federal requirements, by adding language that one of the requirements for purging the record under the bill is that *the violation was not committed by a person operating a CMV*.

**LEGISLATIVE HISTORY**

On March 24, 2003, the Assembly Committee on Transportation voted to recommend passage of Assembly Bill 88 on a vote of Ayes, 8; Noes, 4. On May 29, 2003, the Assembly passed the bill, as amended by Assembly Amendment 1 (which was adopted on a voice vote), by a vote of Ayes, 72; Noes, 23. The bill was immediately messaged to the Senate. On July 1, 2003, in Extraordinary Session, the Senate concurred in the bill, as amended by Senate Amendment 1 (which was adopted on a voice vote), on a vote of Ayes, 22; Noes, 11. The Senate action was immediately messaged to the Assembly (for concurrence in Senate Amendment 1).